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JAN 26, 2005
TENNESSEE REGULATORY AUTHORITY
DOCKET ROOM

Hon Jean Stone, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth's Motion For The Establishment Of A New Performance Assurance Plan*
Docket 04-00150

Dear Hearing Officer Stone:

BellSouth is in receipt of the proposal by CompSouth regarding a revision to the procedural schedule in this docket. As BellSouth noted during the recent status conference, a fair schedule for this docket has already been established by the Hearing Officer. BellSouth has complied with the deadlines imposed by that schedule, including the deadline for responding to the discovery requests that CompSouth served on BellSouth. CompSouth and its members received discovery from BellSouth in December, failed to provide timely and adequate responses, and now seek to excuse their lack of regard for the schedule already in place by simply proposing a new one.

Notwithstanding BellSouth's frustration at the delay caused by CompSouth, BellSouth is prepared to agree to the new scheduling dates proposed by CompSouth. BellSouth does, however, believe that any new schedule should include a date for CompSouth to respond to the discovery that has already been propounded. In this regard, BellSouth believes it would be most helpful for the Hearing Officer to provide a ruling on the *Motion to Compel* that has been filed.

Many of the general, conceptual objections referenced by CompSouth at the status conference are not well taken as applied to the actual requests propounded. In addition, it appears clear that the parties have fundamental disagreements regarding relevance in this case. As an initial matter, under the Tennessee Rule, the concept of relevance is broad and includes all matters that are ***reasonably calculated*** to lead to the discovery of relevant evidence:

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Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

TN Rule Civ Pro. 26.02(1).

Relevance is not defined solely by the direct testimony that **parties** will choose to provide. Instead, relevance turns on the ultimate issues to be decided by the **Authority** in this docket. In this docket, the Authority will be considering changes to the performance measurements plan it adopted pursuant to the parties' settlement in the 271 case. The Authority is not limited in the factors it may consider in establishing that plan, as CompSouth suggested during the status conference. BellSouth believes that the same arguments and issues raised in the *Motion to Compel* regarding the first round of discovery will inevitably remain issues regarding the second round of discovery. For this reason, BellSouth urges the Hearing Officer to rule on the *Motion to Compel* and proposes that supplemental responses as a result of that ruling be served by February 14, 2005.

Cordially,

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Joelle Phillips

JJP:ch

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Page 2

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Joelle Phillips

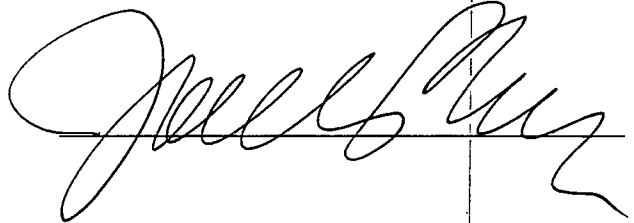
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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2005, a copy of the foregoing document was served on the following, via hand delivery, facsimile, overnight, electronic mail or US Mail, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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